

PART 1400 [RESERVED]

PART 1401—PUBLIC AVAILABILITY OF INFORMATION

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AUTHORITY: 5 U.S.C. 552, as amended.

SOURCE: 57 FR 59803, Dec. 16, 1992, unless otherwise noted.

§ 1401.1 Purpose.

The purpose of this part is to prescribe rules, guidelines and procedures to implement the Freedom of Information Act (FOIA), 5 U.S.C. 552, as amended.

§ 1401.2 The Office of National Drug Control Policy—Organization and functions.

(a) The Office of National Drug Control Policy (ONDCP) was created by the Anti-Drug Abuse Act of 1988, 21 U.S.C. 1501 *et seq.* The mission of ONDCP is to coordinate the anti-drug efforts of the various agencies and departments of the Federal government, to consult with States and localities and assist their anti-drug efforts, and to annually promulgate the National Drug Control Strategy. ONDCP is headed by the Director of National Drug Control Policy. The Director is assisted by a Deputy Director for Supply Reduction, a Deputy Director for Demand Reduction, and an Associate Director for State and Local Affairs.

(b) ONDCP has an Office of Public Affairs that is responsible for providing information to the press and to the general public. If members of the public have general questions about ONDCP that can be answered by telephone, they may call the Office of Public Affairs at (202) 467-9890. This number should not be used to make FOIA requests. All oral requests for information under FOIA will be rejected.

§ 1401.3 Definitions.

As used in this part, the following definitions shall apply:

(a) *Commercial-use request* means a request from or on behalf of one who seeks information for a cause or purpose that furthers the commercial, trade or profit interests of the requester or the person or institution on whose behalf the request is made. In determining whether a requester properly belongs in this category, ONDCP will consider how the requester intends to use the documents.

(b) *Direct costs* means those expenditures that ONDCP actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing) documents to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits) and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space, and heating or lighting the facility in which the records are stored.

(c) *Duplication* means the process of making a copy of a document in response to a FOIA request. Such copies can take the form of paper copy, microform, audio-visual materials, or machine readable documentation. ONDCP will provide a copy of the material in a form that is usable by the requester unless it is administratively burdensome to do so.

(d) *Educational institution* means pre-school, a public or private elementary

or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, or an institution of vocational education, which operates a program or programs of scholarly research.

(e) *Noncommercial scientific institution* means an institution that is not operated on a “commercial” basis as that term is referenced above, and that is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(f) *Records and/or information* means all books, papers, manuals, maps, photographs, or other documentary materials, regardless of physical form or characteristics, made or received by ONDCP and preserved or appropriate for preservation by ONDCP as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Government or because of the information value of the data in them, but does not include books, magazines or other material acquired solely for library purposes and through other sources, and does not include analyses, computations, or compilations of information not extant at the time of the request. The term “records” does not include objects or articles such as structures, furniture, paintings, sculptures, three-dimensional models, vehicles, and equipment.

(g) *Representative of the news media* means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term “news” means information that is about current events or that would be of current interest to the public. Examples of news media include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of “news”) that make their products available for purchase or subscription by the general public. Freelance journalists may be regarded as working for a news organization if they can demonstrate a reasonable basis for expecting publication through that organization, even though not actually employed by it.

(h) *Request* means a letter or other written communication seeking records or information under FOIA.

(i) *Review* means the process of examining documents located in response to a commercial-use request to determine if that document or any portion of that document is permitted to be withheld. It also includes processing any document for disclosure (i.e., doing all that is necessary to excise those portions of the document not subject to disclosure under FOIA and otherwise preparing them for release). Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(j) *Search* means all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. Searches should be performed in the most efficient and least expensive manner so as to minimize costs for both ONDCP and the requester; for example, line-by-line searches should not be undertaken when it would be more efficient to duplicate the entire document. Searches should be distinguished from “review” of material in order to determine whether the material is exempt from disclosure. Searches may be done manually or by computer using existing programming.

§ 1401.4 Records of other agencies.

Requests for records that originated in another agency and are in the custody of ONDCP shall be referred to the originating agency for processing, and the person submitting the request shall be so notified. Any decision made by the originating agency with respect to such records will be honored by ONDCP.

§ 1401.5 How to request records—form and content.

(a) Requests for records under FOIA must be submitted in writing, addressed to: Office of the General Counsel, Office of National Drug Control Policy, Executive Office of the President, Washington, DC 20500. The words “FOIA REQUEST” or “REQUEST FOR RECORDS” must be clearly marked on both the letter and the envelope. If the